

**EVALUATOR MANUAL TRANSMITTAL SHEET**

<b><u>Distribution:</u></b>  <input type="checkbox"/> All Child Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Residential Care Evaluator Manual Holders <input type="checkbox"/> All Evaluator Manual Holders	<b><u>Transmittal No.</u></b> <b>03APX-15</b>  <b><u>Date Issued</u></b>  December 2003
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**Subject:**

2003 Chaptered Legislation  
Appendix A – Community Care Facilities (Children’s Residential).

**Reason For Change:**

This transmits summaries of legislation chaptered in 2003 affecting Community Care Facilities (Children’s Residential) . The summaries are divided into two sections as follows:

1. Immediate Action Required – Interim instructions are provided.
2. Information Only – No action required by CCLD.

An index is attached to assist staff in locating specific bills. Statutes referenced in this document became operative on January 1, 2004.

**Filing Instructions:**

☐ REMOVE –

☒ INSERT – Insert the attached pages into Appendix A. Do not remove similar documents from the previous years.

**Approved:**

*Original signed by J. Robusto for*

*12-29-03*

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Date

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**SUMMARY AND IMPLEMENTATION PLANS  
2003 CHAPTERED LEGISLATION**

**CHILDREN'S RESIDENTIAL FACILITIES**

**CERTIFIED FAMILY HOMES  
FOSTER FAMILY HOMES  
FOSTER FAMILY AGENCIES  
GROUP HOMES  
SMALL FAMILY HOMES**

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***ACTION REQUIRED***

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***INFORMATION ONLY – NO ACTION REQUIRED***

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**Unless otherwise noted, all new legislation becomes effective on January 1, 2004.**

**When conducting visits, LPAs should ensure that providers are aware of any new requirements.**

## **ACTION REQUIRED**

### **AB 458 (Chu), CHAPTER 331, STATUTES OF 2003**

**Affects:** Foster Family Homes, Group Homes, Certified Family Homes, Small Family Homes

**Subject:** Anti-Discrimination On the Basis of Sexual Orientation or Gender Identity

**Summary:** This legislation adds a section to the existing foster children's bill of rights; "fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subject to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, HIV status, or mental or physical disability."

This legislation provides the same rights to providers and foster parents, but allows the "local placement agency" latitude to place based on the child's best interest.

This legislation also amends training requirements for administrators, licensing personnel, licensed and certified foster parents, and relative caretakers to include training on anti-discrimination in regards to sexual orientation and gender identity.

**Implementation:** Pending regulations, use the Health and Safety Code (Sections 1522.41, 1529.2 and 1563) and the Welfare and Institutions Code (Sections 16001.9, 16003, and 16013) as the citing authority.

The Department will:

- Develop and issue an All-County Letter (ACL) to clarify the addition of the non-discrimination right pertaining to sexual orientation and gender identity in the foster children's bill of rights.
- Inform trainers of providers of the need to incorporate training on this subject. (Training may be accomplished using this as a handout.)

State and County Licensing Staff shall, during the course of facility visits and any other contacts with providers, make providers aware that they and their foster children are entitled to fair and equal access to all available services, care, treatment and benefits.

## **ACTION REQUIRED**

### **AB 1370 (YEE), CHAPTER 575, STATUTES OF 2003**

**Affects:** Community Treatment Facilities (CTF)

**Subject:** Nurse Staffing Standards in CTFs

**Summary:** This legislation amends Section 4094 of the Welfare and Institution (W&I) Code to prohibit the Department of Mental Health from requiring 24 hour nursing staff at CTFs when the facility (1) does not use mechanical restraints and (2) does not admit children who require medical services that require 24-hour nursing coverage. However, there must be 24-hour on-call medical or nursing staff available when necessary, within one hour. This legislation also requires that all direct care staff be trained in first aid, cardiopulmonary resuscitation (CPR) and in emergency intervention techniques and methods approved by the Community Care Licensing Division (CCLD). This statute sunsets (will no longer be in effect) in 2007.

**Implementation:** Until regulations are developed, W&I Code Section 4094(e)(1)(A) is the citing authority. Regulations will be developed in consultation with the Department of Mental Health (DMH), since CTFs are jointly overseen by the California Department of Social Services (CDSS) and DMH.

As of January 1, 2004, licensing staff should, during visits to CTFs, determine if the facility utilizes mechanical restraints, and if any children in placement have been assessed to need 24-hour nursing service. If either of these conditions applies, the facility must have a 24-hour onsite nurse, and should be cited if it does not. If neither condition applies, the facility may employ only one full-time or full-time equivalent registered nurse, but must have other medical and nursing staff available within one hour. Licensing staff should verify that there is at least one full-time registered nurse (or full-time equivalent) onsite, and that other on-call nursing or medical staff are available within one hour of contact.

Licensing staff should also determine if all direct care staff have been trained in first aid, CPR, and in emergency intervention techniques and methods.

## **ACTION REQUIRED**

### **SB 130 (Chesbro), CHAPTER 750, STATUTES OF 2003**

**Affects:** Group Homes, Community Treatment Facilities, Small Family Homes, Adult Residential Facilities, Adult Day Programs, and Social Rehabilitation Facilities

**Subject:** Use of Restraints and Seclusion

**Summary:** This legislation adds Division 1.5 (Sections 1180 – 1180.6) to the Health and Safety Code to achieve the goal of reducing the use of seclusion and behavioral restraints. Section 1180.1 defines these and related terms:

- “Seclusion” means the involuntary confinement of a person alone in a room or an area from which the person is physically prevented from leaving.
- “Behavioral restraint” means a mechanical or physical restraint used as an intervention when a person presents an immediate danger to self or to others. It does not include devices used to improve independent functioning rather than to restrict movement.

Sections 1180.4(b)-(k) prohibit certain physical restraints and containment techniques. Prone containment techniques must be avoided whenever possible and persons who are restrained must be afforded the least restrictive alternative.

Section 1180.4(a) requires that prior to placement, or upon admission or as soon thereafter as possible, a facility must conduct an initial assessment of each client/child that shall include five factors summarized as follows:

- (1) the client/child’s advance directive regarding de-escalation or the use of seclusion or behavioral restraints;
- (2) identification of early warning signs that cause the client/child to escalate;
- (3) techniques that would help the client/child to control his or her behavior;
- (4) preexisting medical conditions or disabilities or limitations that would place the client/child at greater risk; and
- (5) any trauma history that the client/child feels is relevant.

Section 1180.5(a) requires that the facility shall conduct a clinical and quality review for each episode of the use of seclusion or behavioral restraints.

Section 1180.5(b) requires that within 24 hours after the use of seclusion or restraint, the facility must conduct a debriefing regarding the incident with the person, family member or representative if requested, facility staff members involved, and a representative of the facility senior or management staff.

Section 1180 provides that the California Health and Human Services Agency (HHSA) shall provide the leadership and coordination necessary to reduce the use of seclusion

and behavioral restraints. Within existing resources or when funding is available, HHSA and the involved departments must develop a system for collecting data regarding each death or serious injury of a person that occurs during, or is related to, the use of seclusion or behavioral restraints. All involved departments, including CDSS, must coordinate in implementing any training protocols. Within existing resources or when funding is available, the State Department of Mental Health and the State Department of Developmental Services are to develop technical assistance and training programs to support the efforts of facilities to reduce the use of seclusion and behavioral restraints.

The departments under HHSA must annually provide information to the legislature about the progress made in implementing the legislation, including the progress and barriers to achieve full implementation.

### **Implementation:**

The legislation is enforceable without regulations and is consistent with personal rights regulations, particularly concerning group homes and community treatment facilities. The Health and Safety Code is the citing authority, along with relevant regulations. Licensing staff should, during facility visits and in other contacts with providers, inform providers of these requirements, including debriefings.

Pursuant to Sections 1180.5(b) and (c), the debriefing must occur within 24 hours and must include:

- the involved client/child (on a voluntary basis);
- staff involved, if reasonably available, and a supervisor;
- and, if the client/child requests it, the authorized representative or significant others in the client/child's life, if reasonably available; and
- the opportunity for both the facility staff and the client/child to discuss the circumstances resulting in the use of seclusion or restraint, and strategies to be used by staff, the client/child, or others that could prevent future use.

As stated in Section 1180.5(b)(1)-(4), the purposes of the debriefing are, among other things, to help assess whether the intervention was necessary and was implemented in a manner consistent with staff training and facility policies.

As required by Section 1180.5(d), debriefings must:

- be documented by facility staff in the client/child's record and on the Incident Report, and
- must document any changes to the needs and services or treatment plan as a result.

Licensing staff should cite Health and Safety Code Section 1180.5(d) if they do not find proof of the debriefing session in the client/child's record at the facility. Violations concerning the improper use of seclusion or restraints should be cited under the specific Health and Safety Code section, along with relevant Title 22 regulations.

## **ACTION REQUIRED**

### **SB 577 (KUEHL), CHAPTER 878, STATUTES OF 2003**

**Affects:** Child Care Facilities, Community Care Facilities, Residential Care Facilities for the Chronically Ill, and Residential Care Facilities for the Elderly

**Subject:** Protection and Advocacy (P&A) Agency

**Summary:** This legislation amends Section 1798.24b of the Civil Code, and Sections 4514.3, 4900, 4901, 4902, 4903, 4905, and 5328.06 of, and adds Section 4906 to, the Welfare and Institutions (W&I) Code, expanding the non-profit P&A agency's authority and rights to access to facilities, disabled clients/residents and their records.

The expansion is a result of the amended definition of "disability" updating the federal reference to developmental disabilities, adding the federal reference to mental illness, and adding a reference to the federal Americans with Disabilities Act (ADA) and to the California Fair Employment and Housing Act. (W&I Code Section 4900(d) and (i))

Consistent with existing law, if the P&A agency deems there is an imminent risk of harm to a client, the client's and/or facility records must be made available to them within 24-hours of the initial request. For investigations where the P&A agency has deemed there is not an imminent risk of harm, records must be made available within three days of the initial request.

Consistent with existing law, the P&A agency is entitled to view and copy medical records, financial records, monitoring reports, or other reports, prepared or received by a member of the staff of a facility, program or service that is providing care, treatment or services.

Consistent with existing law, the P&A agency has access to records of CCL investigations, including confidential information that is not part of the public file, and of death review teams.

### **IMPLEMENTATION:**

Licensing staff will implement as follows:

- Provide P&A with requested documents within 3 business days after the agency makes a written request or, within 24 hours when the agency determines there is a probable cause to believe an immediate hazard exists or there has been a death.
- In the event there is an unusual situation where it may be difficult to produce the requested records within 24 hours, licensing staff will work with the P&A agency to attempt to get an extension.

## INFORMATION ONLY

### **AB 1752 (Committee on Budget), CHAPTER 225, STATUTES of 2003**

**Affects:** Child Care Facilities, Community Care Facilities, Residential Care Facilities for the Chronically Ill and Residential Care Facilities for the Elderly

**Subject:** License Fee Increases, Required Annual Visits and Random Sample Visits

**Summary:** This legislation amends Sections 1523.1, 1534, 1568.05, 1569.185, 1569.33, 1596.803, 1596.871, 1597.09, 1597.55a and 1597.55b of the Health & Safety Code relating to fees and visits. The provisions are as follows:

- Increased annual license fees and eliminated aggregate fees for licensees with multiple facilities.
- Annual visits will be made to facilities when a license is on probation; when the terms of agreement in a facility compliance plan require an annual evaluation; when an accusation against a licensee is pending; and when a facility requires an annual visit as a condition of receiving federal financial participation.
- Annual visits will also be made to ten percent of the total number of licensed facilities identified using a random sample methodology.

### **SB 970 (ORTIZ), CHAPTER 470, STATUTES OF 2003**

**Affects:** Child Care Facilities, Community Care Facilities, Residential Care Facilities for the Chronically Ill and Residential Care Facilities for the Elderly

**Subject:** Fingerprinting: Criminal Offender Records

**Summary:** This legislation adds Sections 11077.1 and 11077.2 and amends Section 11077 of the Penal Code relating to criminal offender record information. By July 1, 2004, the Attorney General must establish and implement an electronic communication network that allows the transmission of criminal offender record information requests directly to the Department of Justice (DOJ) from approved private service providers in California for purposes of employment, licensing, certification, custodial child placement or adoption.

In addition, beginning July 1, 2005, DOJ is required to accept fingerprint images and related information to process criminal offender record information requests for the above specified purposes, only if transmitted electronically from a DOJ approved entity.

DOJ is also required to accept hard fingerprint cards, to process these requests based on regional unavailability of electronic transmission sites, or when DOJ processing procedures show a need. Nothing in this statute is intended to authorize any entity to access or receive criminal offender record information from DOJ.